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MICHIGAN V. CLIFFORD

No. 82-354 decided January 11, 1984
34 CrL 3007

The U.S. Supreme Court affirmed the Michigan Supreme Court, who had suppressed, on Fourth Amendment grounds, evidence found in a fire-damaged residence by arson investigators who conducted an extensive warrantless search some hours after firefighters had extinguished the blaze and left the scene.

Justice Powell, writing for the Court phrases the question

as to the authority of arson investigators, in the absence of exigent circumstances or consent, to enter a private residence without a warrant to investigate the cause of a recent fire.

The facts can be summarized as follows: A fire was reported to the Detroit Fire Department (DFD) and units arrived at the Clifford house at 5:42 a.m. The fire was extinguished and all fire officials and police left the premises at 7:04 a.m. The residence was unoccupied as the Cliffords were out of town at the time of the fire. At 8 a.m. Lt. Beyer, an investigator with DFD, was instructed to investigate as arson was suspected. Beyer and his partner arrived at the scene about 1 p.m.

Work crews were securing the house on the instructions of Clifford. A neighbor informed Beyer that the Cliffords did not plan to return that day. While waiting for the work crew to finish pumping water out of

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the basement, the investigators seized a Coleman fuel can which had been found in the basement by the firefighters and placed in the driveway.

At 1:30 p.m., after the water was removed, Beyer and his partner entered the Clifford residence and began their investigation into the cause of the fire. Starting in the basement, they determined that the origin of the fire was beneath the basement stairway. They detected a strong odor of fuel and found two more Coleman

fuel cans. They also discovered a crock pot connected to an electric timer set to cut on at 3:45 a.m. and to turn back off at 9:00 a.m. It had stopped between 4 and 4:30. All this evidence was seized and marked.

Beyer and his partner proceeded to conduct an extensive and thorough search of the remainder of the house, photographs were taken, drawers and closets, full of old clothes were searched and the absence of pictures on the walls and a video tape machine was noted.

The court, citing Michigan v. Tyler 436 U.S. 499, reaffirmed the position that administrative searches generally require warrants.

Except in certain carefully defined classes of cases, the nonconsensual entry and search of property is governed by the warrant requirement of the Fourth and Fourteenth Amendments. The constitutionality of warrantless and nonconsensual entries onto fire-damaged premises, therefore, normally turns on several factors: whether there are legitimate privacy interests in the fire-damaged property that are protected by the Fourth Amendment; whether exigent circumstances justify the government intrusion regardless of any reasonable expectations of privacy; and, whether the object of the search is to determine the cause of the fire or to gather evidence of criminal activity.

The reasonable expectations of privacy test is an objective one: whether "the expectation [is] one that society is prepared to recognize as 'reasonable'." Katz v. U.S., 389 U.S. 347, 361 (1967) (Harlan, J. concurring).

The fire itself is an exigent circumstance and the Court said in Tyler that officials need no warrant to remain for a reasonable time to investigate the cause of

the blaze after it has been extinguished. But once the fire is out and the fire and police officials have left the scene, absent a new exigency, a warrant is required.

The court says that the object of the search determines the type of warrant required.

If the primary object is to determine the cause and origin of a recent fire, an administrative warrant will suffice.If the primary object of the search is to gather evidence of criminal activity, a criminal search warrant may be obtained only on a showing of probable cause to believe that relevant evidence will be found in the place to be searched.

An administrative warrant can be obtained if fire officials show:

1. that a fire of undetermined origin has occurred on the premises;
2. that the scope of the proposed search is reasonable;
3. that the search will not intrude unnecessarily on the fire victim's privacy; and
4. that the search will be executed at a reasonable and convenient time.

The basis for issuing an administrative warrant exists if reasonable legislative, administrative, or judicially prescribed standards for conducting an inspection are satisfied with respect to a particular dwelling.

If during the administrative search, evidence of criminal activity is discovered, it may be seized under the "plain view" doctrine and used to provide probable cause for a second criminal warrant. Such evidence cannot be used to expand the administrative search without an independent determination of probable cause made by a neutral and detached magistrate.

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Applying the principles just discussed, the Court viewed the search of the Clifford dwelling as two separate ones: the search of the basement to determine the cause and origin of the fire, and the upstairs search for evidence of criminal activity. Neither search was justified by any exigent circumstances and the search could not be justified as a continuation of the fire fighting effort when entry was justified, as was the search in Tyler. Hence both searches were in violation of the Constitution and all physical evidence, except the fuel can discovered in the course of fighting the fire and seized in the driveway, and the investigators related testimony was excluded.

Clifford; Tyler; Mincey v. Arizona, 57 L.Ed 2d 290 (1978) (search of suspect's apartment where a shooting occurred); Marshall v. Barlow's, Inc. 436 U.S. 307 (1978) (search pursuant to OSHA regulation); Camara v. Municipal Court, 387 US 523 (1967) and See v. City of Seattle, 387 U.S. 541 (1967) (searches based on city housing and fire inspection codes) clearly impose some requirement beyond departmental policy, regulation or statute in order to authorize a nonconsensual entry into a building to inspect, search or gather evidence. This requirement is an administrative warrant, issued by a judicial officer, upon a showing that there are reasonable standards for conducting the inspection with respect to a particular dwelling, including the object of the search, the scope of the search, the necessity of the search and that the search will be executed at a reasonable and convenient time.

If probable cause exists to believe that relevant evidence of criminal activity will be found, a criminal warrant should be obtained.

It should be remembered that the Fourth Amendment protects from unreasonable searches and seizures and absent consent or exigent circumstances warrantless entries are generally unreasonable per se.

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